

## **The complaint**

Mr W complains that QIC Europe Limited has unfairly declined his home insurance claim for accidental damage to his wall and fence panels.

## **What happened**

Mr W made a claim to QIC in June 2021 after his next-door neighbour caused damage to his garden wall and fence. Mr W explained to QIC that his neighbour was replacing the deck at the rear of his property and when the deck was taken down by the neighbour's builder the wall supporting it collapsed. The collapsed wall damaged two of Mr W's fence panels and caused the supporting wall for his own deck to crack and move from its original position. Mr W said this rendered his deck and garden unusable for safety reasons.

QIC instructed a surveyor to attend and inspect the damage. He reported that the wall retained the rear elevated garden and was approximately 3m in height and 5m long. He noted that the wall was continuous into the neighbour's property, appeared to have been constructed correctly and that the timber decking had been fixed to its top and had been in place for some time without failure. He went on to note that the proximate cause was unknown and to be determined by an engineer.

QIC referred the report to its in-house engineer for review after which the claim was declined. Mr W then complained. QIC looked into his complaint and said that his claim had been considered under the 'subsidence, heave and landslip' section of his policy. It said it was satisfied that the damage wasn't consistent with any of these events and, even if was, damage to fences and garden walls was only covered if the main building/house was damaged at the same time by the same cause which, QIC said, it hadn't been. QIC also pointed out that there was an exclusion under the same section for damage that was caused by alterations, renovations, demolitions or repairs. QIC explained that the correct outcome had been reached so it wouldn't be upholding Mr W's complaint.

Unsatisfied with the outcome of QIC's investigation, Mr W then complained to this service. Our investigator looked into the complaint for him and said to QIC that Mr W had additional accidental damage (AD) to buildings cover on his policy so she asked why his claim hadn't been assessed against this section of the policy. She also asked QIC to provide the notes from its investigation if it had indeed considered the claim against the additional AD section.

QIC responded to say that it obviously always considered whether any section of the policy would respond to a claim and said that it had looked at the additional AD section. It went on to say that unfortunately the damage Mr W had reported didn't meet the policy definition of 'accidental damage' which is why it hadn't been considered under this section. It also said that there was a specific exclusion to the additional AD section which stated it didn't cover loss or damage excluded under covers 1 to 10 so, as the damage was specifically excluded under the 'subsidence, heave and landslip' section (section 9) it wasn't covered.

Our investigator considered what QIC had said and pointed out that the damage Mr W had reported did meet the policy definition of accidental damage. And she said the exclusion QIC had cited related to the 'subsidence, heave and landslip' section none of which had caused

the damage Mr W had reported. So, she said, she couldn't see how this section was relevant. Our investigator asked QIC to explain why the damage Mr W was claiming for didn't meet the policy definition of 'accidental' and why an exclusion relating to subsidence, heave and landslip was relevant.

QIC replied to say that the policy definition for AD required the damage to be 'unexpected' and it disputed that the damage reported by Mr W could be described as such. It said that the wall that was damaged was a retaining wall and therefore particular precautions should've been taken before works which could compromise the structural integrity of the wall were undertaken. It then went on to refer our investigator to the general policy exclusion for damage caused by poor workmanship which, it said, it was satisfied could be applied. It said Mr W should claim against his neighbour's contractor's insurance or pursue a legal claim against the contractor.

Having considered QIC's responses our investigator issued her findings recommending that Mr W's complaint was upheld. She recommended that QIC accept the claim and pay Mr W compensation of £150 for the distress and inconvenience caused to him by incorrectly declining his claim.

QIC disagreed with our investigator's conclusions. It said the damage to the wall was caused by the removal of the neighbour's decking which a competent tradesperson wouldn't have done without first considering the implications on the structural integrity of the wall of doing so. It said the contractor displayed poor workmanship by removing decking which could, and subsequently did, affect the wall and lead to its collapse. It said the poor workmanship exclusion could either be applied to the removal of the decking or the wall's construction.

It asked for the complaint to be referred for an ombudsman's decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with our investigator that this is a complaint that should be upheld. I'll explain why.

QIC considered and declined Mr W's claim against the 'subsidence, heave and landslip' section of his policy. It was that section, and its specific exclusions, which were communicated to Mr W as the reason his claim was being declined. It was also that specific section of cover and its specific exclusion that was again cited by QIC in its final response letter as the reason why it was declining the claim.

Clearly the damage Mr W reported was not the result of 'subsidence, heave or landslip'. There is no evidence of any downward or upward movement of the ground or any landslip. It is thus unclear to me why this section of cover was the one against which Mr W's claim – a claim for damage caused suddenly by his neighbour's builder - was considered against. That is especially the case when he had paid the additional premium to protect his buildings from damage caused by additional AD.

It seems to me – due to the lack of any evidence to suggest otherwise – that the first time QIC considered Mr W's claim against the additional AD cover under the policy was when it was first suggested by this service. As QIC will no doubt be aware, this service has provided guidance to the insurance industry that it should fully consider a claim against all insured perils that could potentially provide cover for before declining a claim. It is also good practice for an insurer to set out its conclusions clearly and in full. It doesn't appear that QIC did either of these things in this case. When QIC was questioned about its approach to this

claim, it then appears to have done what it should have in the first place and consider the claim under the additional AD cover. It then attempted to again defeat the claim, for completely different reasons. I can only express disappointment in QIC's approach to this claim and its policyholder, as I don't consider it could be considered to be treating its customer fairly.

The starting point for any claim is to consider if it is covered by the policy terms. I can see that Mr W's policy includes the following relevant definitions:

*'Accidental damage*

*Sudden, unexpected and physical damage which:*

- i. happens at a specific time; and*
- ii. was not deliberate; and*
- iii. was caused by something external and identifiable"*

*'Buildings*

*Any permanent structure within **your property**.*

*This includes:*

- the structure of your home...*
- ...boundary and garden walls;*
- gates, fences and hedges..'*

*'Property*

*The risk address shown in your schedule which you are legally responsible for, including the land and gardens'.*

And it includes the following section:

*'Section 1 – Buildings cover*

*...We cover your buildings up to the sum insured shown in your schedule against loss or damage caused by the following covers...*

*...Optional, upgraded cover...*

*14. Additional accidental damage to the buildings. If you have asked for this cover, we will pay for **accidental damage** to your **buildings**."*

The damage that Mr W's wall and fence sustained happened accidentally. It was sudden, unexpected, happened at a specific time, wasn't deliberate and was caused by something external and identifiable. The policy says that if the optional upgraded AD cover is taken out then it will pay for accidental damage to buildings. As cited above, fences and garden walls form part of the definition of buildings.

QIC has said that the damage wasn't 'unexpected' in that a tradesperson should've anticipated such damage was possible and thus have taken particular precautions. So, it says, the damage wasn't accidental (as defined in the policy). But QIC has provided no evidence that the contractor failed to do so. Nor has it provided any evidence about the works the neighbour's contractor undertook, how it assessed the risk, whether any mitigation was put in place or what actually happened. But for Mr W, the damage happened unexpectedly. That is, he didn't expect it to happen. In the absence of any evidence to show the damage was *expected* it is reasonable to conclude that the damage he reported happened accidentally and is, therefore, covered by the policy terms.

So, the only way that QIC can defeat Mr W's claim is to successfully rely on one of the policy exclusions to do so. As QIC is aware, the burden of proving that an exclusion can be successfully applied rests with the insurer. QIC has cited three exclusions. The first is an exclusion specific to the additional AD section of the policy. That section includes 11 separate specific exclusions where QIC won't pay for additional AD to buildings.

The first exclusion it seeks to rely on is the one that states it won't cover loss or damage specifically excluded from covers 1 to 10 (fire, theft, subsidence etc.). QIC said that as the damage was specifically excluded under section 9 ('subsidence, heave or landslip') then this specific additional AD exclusion could be relied on. For the reasons I've given above, as the damage hasn't been caused by 'subsidence, heave or landslip' none of the exclusions specific to that section are relevant to this claim. It follows that I'm unable to reasonably agree with QIC that this specific exclusion for additional AD claim on which it seeks to rely can be fairly applied to Mr W's claim.

QIC has also referred to another of the exclusions specific to the additional AD section which states that damage that is the '*result of any alterations, extensions, renovations or repairs to the buildings...*' isn't covered. For this exclusion to be successfully applied, the alterations must be to the *buildings* (as defined in the policy). The policy definition of *buildings* refers to any permanent structure in '*your property*'. And '*property*' is defined as the risk address. In short this means that for this exclusion to apply the damage caused by alterations must be by alterations *to the risk address*. The damage was caused by alterations at the neighbour's address. It follows that this exclusion cannot fairly be applied to Mr W's claim.

QIC has latterly sought to rely on the general policy exclusion for poor workmanship – either in the removal of the decking or the construction of the wall. Unfortunately for QIC its own surveyor reported the wall to be correctly constructed. Thus the only evidence that exists about the workmanship of the wall entirely undermines QIC's position. So I can't agree that that the wall collapsed as a result of being poorly constructed.

And whilst QIC says that there was poor workmanship associated with the removal of the decking it hasn't provided any evidence in support of its position. As I said above, the burden of proving that an exclusion can be successfully applied to a claim in order to defeat it rests with the insurer and unfortunately for QIC it hasn't provided any evidence to prove it was this, and not an accident, that caused the damage at Mr W's home.

It follows that, for the reasons I've given, I think that the damage claimed for falls for cover under the additional accidental damage section of Mr W's policy. I'm unable to fairly agree with QIC that any of the exclusions it has sought to rely on can be used by it to defeat the claim.

### **Putting things right**

QIC has had an opportunity to consider this claim against the full policy terms so it should now accept the claim and settle it in line with those terms. Mr W has been put to some distress and inconvenience as a result of QIC's decision to decline his claim – he has been unable to use his garden for example, as it is currently unsafe to do so. By their very nature, all insurance claims attract a certain level of inconvenience, that's to be expected. But where an insurer, through its words or deeds, makes an already stressful situation worse, this service can require that it pay compensation. For the avoidable distress and inconvenience QIC caused Mr W, I require it to pay him compensation of £150.

### **My final decision**

My final decision is that I uphold this complaint and require QIC Europe Limited to take the steps set out in the *'putting things right'* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 April 2022.

Claire Woollerson  
**Ombudsman**